

CHAPTER 11
RULES GOVERNING STANDARDS OF PRACTICE FOR
LAWYER MEDIATORS IN FAMILY DISPUTES

Rule 11.1	Family mediation — definition
Rule 11.2	Pre-mediation orientation session
Rule 11.3	Disclosure limitations for mediators
Rule 11.4	Mediator — impartiality
Rule 11.5	Assuring full disclosure by participants
Rule 11.6	Termination of mediation
Rule 11.7	Mediator's duty to advise participants to obtain legal advice
Rule 11.8	Mediator's compliance with rules

CHAPTER 11

RULES GOVERNING STANDARDS OF PRACTICE FOR LAWYER MEDIATORS IN FAMILY DISPUTES

Rule 11.1 Family mediation — definition. For the purpose of these standards, family mediation is defined as a process in which a lawyer alone or with individuals from other disciplines helps family members resolve their disputes in an informal and consensual manner. This process requires that an impartial mediator be qualified by training, experience, and temperament. The participants should reach decisions voluntarily, with decisions being based on sufficient factual data and understanding. While family mediation may be viewed as an alternative means of conflict resolution, it is not a substitute for the benefit of independent legal advice.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.2 Pre-mediation orientation session. The mediator has a duty to define and describe the process of mediation and its costs before the parties reach an agreement to mediate.

Before the actual mediation sessions begin, the mediator shall conduct an orientation session to give an overview of the process and to assess the appropriateness of mediation for the participants. Among the topics covered during the orientation session, the mediator shall discuss the following:

11.2(1) The mechanics of the process, so that the participants understand the differences between mediation and other available means of conflict resolution. In defining the process, the mediator also shall distinguish mediation from therapy or marriage counseling.

11.2(2) The issues to be resolved in mediation as mutually defined by the participants.

11.2(3) The alternative ways of resolving problems, with the caveat that all decisions are to be made voluntarily by the participants, since the mediator's views are to be given no independent weight or credence.

11.2(4) The duties and responsibilities agreed to by the mediator and participants in the mediation process. If the mediator or one of the parties is not able or willing to participate in good faith, then either participant, or the mediator, has the right to suspend or terminate the process at any time.

11.2(5) The fees for mediation. It is inappropriate for a mediator to charge a contingency fee or to base the fee on the outcome of the mediation process.

11.2(6) The need to employ independent legal counsel for advice throughout the mediation process. The mediator shall inform the participants that the mediator cannot represent either or both of them in any other legal matter during the mediation process or for a period of three years after termination of the mediation process. The mediator cannot undertake the mediation if either of the participants previously has been a client, or a client of the mediator's law firm.

11.2(7) The issue of separate sessions and under which circumstances the mediator may meet alone with either participant or with any third party.

11.2(8) The emotions which play a part in the decision-making process. The mediator shall attempt to elicit from each participant a confirmation that each understands the connection between one's own emotions and the bargaining process.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.3 Disclosure limitations for mediators. The mediator shall not voluntarily disclose information obtained through the mediation process without the prior consent of both participants.

11.3(1) At the outset of mediation, the parties should agree in writing to require the mediator not to disclose to any third party any statements made in the course of mediation, unless such disclosure is required by law, without the prior consent of the participants. The mediator shall also inform the parties of the limitations of confidentiality such as statutory or judicially mandated reporting.

11.3(2) If subpoenaed or otherwise notified to testify, the mediator shall inform the participants immediately so as to afford them an opportunity to undertake action to quash the process.

11.3(3) The mediator shall inform the participants of the mediator's inability to bind third parties to an agreement.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.4 Mediator — impartiality. The mediator has a duty to be impartial.

11.4(1) The mediator shall disclose to the participants any biases or strong views relating to the issues to be mediated, both in the orientation session, and also before the issues are discussed in mediation.

11.4(2) The mediator must be impartial as between the participants. The mediator's task is to facilitate the ability of the participants to negotiate their own agreement, while raising questions as to the fairness, equity, and feasibility of proposed options for settlement.

11.4(3) The mediator has a duty to ensure that the participants consider fully the best interests of any affected child and that they understand the consequences of any decision they reach concerning the child, apart from a desire for any particular parenting arrangement. If the mediator believes that any proposed agreement does not protect the best interests of any affected child, the mediator has a duty to inform the participants of this belief and its basis.

11.4(4) The mediator shall not communicate with either party alone, or with any third party, to discuss mediation issues without the prior consent of the participants.

11.4(5) The mediator shall obtain an agreement from the participants during the orientation session as to whether, and under what circumstances, the mediator may speak directly and separately with each participant's lawyer during the mediation process.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.5 Assuring full disclosure by participants. The mediator has a duty to assure that the participants make decisions based upon sufficient information and knowledge.

11.5(1) The mediator shall assure that there is full financial and factual disclosure, such as each would reasonably receive in the discovery process, or that the participants have sufficient information to waive intelligently the right to such disclosure.

11.5(2) In addition to requiring this disclosure, the mediator shall promote the equal understanding of such information before any agreement is reached. This consideration shall require the mediator to recommend expert or legal consultation in the event it appears that additional knowledge or understanding is necessary for balanced negotiations. The mediator shall assure that each participant has had the opportunity to fully understand the implications and ramifications of all available options.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.6 Termination of mediation. The mediator has a duty to suspend or terminate mediation whenever continuation of the process would harm one or more of the participants.

11.6(1) If the mediator believes that the participants are unable or unwilling to meaningfully participate in the process or that reasonable agreement is unlikely, the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help. The mediator shall not participate in a process that the mediator believes will result in harm to a participant.

11.6(2) The mediator has a duty to assure a balanced dialogue and must attempt to diffuse any manipulative or intimidating negotiation techniques utilized by either of the participants.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.7 Mediator's duty to advise participants to obtain legal advice. The mediator has a continuing duty to advise each of the participants to obtain legal review prior to reaching any agreement.

11.7(1) At the beginning of the mediation process, the mediator shall inform the participants that each should employ independent legal counsel for advice and that counsel should be consulted throughout the process. In order to promote the integrity of the process, the mediator shall not refer either of the participants to any particular lawyer. When an attorney referral is requested, the parties should be referred to the Iowa State Bar Association's Lawyer Referral Service.

11.7(2) The mediator shall obtain an agreement from the participants that their lawyer, upon request, shall be entitled to review all the factual documentation provided by the participants in the mediation process.

11.7(3) Any proposed agreement which is prepared in the mediation process should be reviewed separately by independent counsel before it is signed. If the participants, or either of them, choose to proceed without independent counsel, the mediator shall warn them of the risks involved in not being represented, and shall provide them with the following statement in writing:

WARNING

Without review and advice by your own independent legal counsel, you may be giving up legal rights to which you are entitled, or running certain risks of which you are not aware, with respect to the following types of issues:

- (1) Real and personal property division.
- (2) Income tax consequences resulting from an agreement regarding division of property, alimony, or child support.
- (3) Accurate documenting and recording of conveyances and proper title to real estate or personal property.
- (4) Alimony.
- (5) Child custody, visitation, and support.
- (6) Court costs and attorney fees.
- (7) Subsequent modifications and substantial changes in circumstances.
- (8) Court disapproval of any submitted agreement which is contrary to the parties', or an affected child's, legal rights.

The above is not a complete list of legal rights and is not meant to be. There may be other considerations unique to the circumstances of your individual case. You should consult a lawyer for advice.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 11.8 Mediator's compliance with rules. The mediator shall comply with these standards of practice at all times.

11.8(1) The mediator shall not offer any services in connection with a mediation process or to any participant if the mediator would be unable to comply fully with these standards of practice. Under such circumstances, the mediator shall promptly suspend the process until compliance is achieved, or terminate the process.

11.8(2) Notice of complaints about, or violations of, any of the provisions of this chapter shall be initiated or received by the Iowa Supreme Court Attorney Disciplinary Board and processed pursuant to chapters 34 to 36 of the Iowa Court Rules.

[Court Order December 31, 1986, effective February 2, 1987; November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]